

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\*\*\*\*\*  
IN THE MATTER OF APPLICATION )  
FOR BENEFICIAL WATER USE PERMIT ) FINAL ORDER  
NO. 16,340-s76L BY DRUM LAND )  
AND LIVESTOCK )  
\*\*\*\*\*

The Proposed Order as entered by the Hearing Examiner on March  
13, 1980, is hereby adopted as the Final Order.

FINAL ORDER

1. Subject to the Provisions and conditions listed below, Provisional

Permit to Appropriate Water No. 16,340-s76L by Drum Land and  
Livestock is hereby granted to appropriate 1.42 cubic feet per  
second or 640 gallons per minute of water, not to exceed 153  
acre-feet per annum, from an unnamed tributary of Lower Crow  
Reservoir, a tributary of Crow Creek, in Lake County, Montana.  
The water is to be diverted by means of a pump from said  
unnamed tributary at a point in the NE1/4 SE1/4 SW1/4 of  
Section 1, Township 20 North, Range 21 West, M.P.M., and  
impounded in a new .002 acre-foot pond and used for new  
irrigation on 14 acres in the NW1/4 of Section 12, 19 acres in  
the SW1/4, and 28 acres in the SE1/4 of Section 1, all in  
Township 20 North, Range 20 West, M.P.M., for a total of 61  
acres, more or less, from April 1 to October 31, inclusive, of  
each year.

2. The Permit is granted subject to all prior water rights.

3. The Permit is granted subject to any final determination of  
existing water rights, as provided by Montana law.

- 1       4. The Permit is granted subject to all prior reserved water  
2           rights of the Confederated Salish and Kootenai Tribes of the  
3           Flathead Indian Reservation, if any, in the source of supply.
- 4       5. The Permittee shall install and maintain an adequate flow meter  
5           at the pump in order to allow the flow rate and volume of  
6           water diverted to be recorded. The Permittee shall keep a  
7           written record of the flow rate and volume of all waters  
8           diverted, including the period of time, and shall submit said  
9           records to the Department upon request.
- 10      6. The Permittee shall submit his proposed pumping schedule to the  
11           Flathead Irrigation Project Engineer at the beginning of each  
12           irrigation season.
- 13      7. The Permittee shall install an adequate measuring device on  
14           the unnamed tributary at a site below the Permittee's pump  
15           site. The Permittee shall keep accurate written records of  
16           weekly streamflows on the unnamed tributary from April 15 to  
17           October 1, inclusive, of each year, and shall submit said  
18           records to the Department upon request.
- 19      8. The Permittee shall install a staff gauge on the road bridge  
20           above the confluence of Crow Creek and the Flathead River at  
21           a point in the NE1/4 NW1/4 of Section 28, T20N, R21W, M.P.M.  
22           The Permittee shall keep accurate written records of weekly  
23           streamflows from April 15 to October 1, inclusive, of each  
24           year, and shall submit said records to the Department upon  
25           request.
- 26      9. The Permittee shall allow the Department of Natural Resources  
27           and Conservation and the Flathead Irrigation Project Engineer  
28           access to all measuring devices after reasonable notice is  
          given.

10. The issuance of the Provisional Permit by the Department in no way reduces or alters the Permittee's liability for damages caused by the Permittee's exercise of the Provisional Permit, nor does the Department in issuing this Provisional Permit in any way acknowledge liability for damage caused by the Permittee's exercise of this Provisional Permit.

11. The issuance of the Provisional Permit by the Department in no way grants the Permittee any right to violate the rights of any other party, nor does it excuse the Permittee from any liability for same, even if such violation is a necessary and unavoidable consequence of exercising this Permit.


12. Notice: This is to inform you, the Permittee, that the Confederated Salish and Kootenai Tribes of the Flathead Reservation claim prior reserved water rights and it is their position that economic investments made in reliance upon this permit, do not create in the Permittee any equity or vested right against the Tribes.

NOTICE

The Hearing Examiner's Final Order may be appealed in accordance with the Montana Administrative Procedures Act, by filing a petition in the appropriate court within 30 days after service of the Final Order.

No water may be appropriated under this Final Order until Provisional Permit No. 16,340-s76L is issued by the Department.

DATED this 31st day of March, 1980.

  
DAVID L. PENGELLY, D.N.R. & C.  
HEARING EXAMINER

BEFORE THE DEPARTMENT OF  
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OF THE STATE OF MONTANA

\*\*\*\*\*  
IN THE MATTER OF APPLICATION )  
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Pursuant to the Montana Water Use Act and the Montana Administrative Procedures Act, a Pre-Hearing Conference was conducted on December 5, 1979, at Polson, Montana. The Applicant, Drum Land and Livestock, appeared by Dan Drum and was represented by counsel, C. B. McNeil, of Polson, Montana. Also present on behalf of the Applicant was Dave Drum. Objectors to the above Application are: the Flathead Irrigation District, the Flathead Irrigation Project, and the Confederated Salish and Kootenai Tribes. The Flathead Irrigation Project and the Flathead Irrigation District appeared at the Pre-Hearing Conference by Mr. Dan Connors and Mr. William Slack.

Department personnel present were: Mr. Jim Rehbein, Kalispell Water Rights Bureau Field Office Manager; and Mr. David Pengelly, Department Hearing Examiner.

During the course of the Pre-Hearing, the Applicant and the Objectors, with the assistance of Mr. Jim Rehbein, agreed to try to work out a compromise on this matter. No stipulation was reached at the Pre-Hearing Conference. Subsequent to the Pre-Hearing Conference a list of conditions acceptable to both the Applicant and to the Objectors was agreed upon.

An agreement signed by the Applicant, Mr. Dan Drum, was received by the Department on February 13, 1980. On February 14, 1980, the Department received the same agreement with some changes signed by Mr. George Moon,

1 representing the Flathead Irrigation Project and the Flathead Irrigation  
2 District. (Mr. C. E. Caffrey stated in a phone conversation prior to  
3 the Pre-hearing Conference that the Flathead Irrigation District's  
4 objection would be handled through Mr. George Moon, Flathead Irrigation  
5 Project Engineer) On February 15, 1980, the Department received a  
6 letter signed by the Applicant's attorney, Mr. C. B. McNeil, agreeing to  
7 the changes made in the initial agreement by Mr. George Moon. The  
8 Confederated Salish and Kootenai Tribes waived any factual hearing,  
9 since their objection is a legal one.

10 The Flathead Irrigation Project requests that their objection to  
11 Application No. 16,340-s76L be withdrawn subject to the following conditions:

- 12 1. Subject to all prior existing water rights in the source  
13 of supply.
- 14 2. Subject to the final determination of water rights in the  
15 source of supply as provided by Montana law.
- 16 3. Subject to the reserved water rights, if any, by the Confederated  
17 Salish and Kootenai Tribes in the source of supply.
- 18 4. Subject to a meter being installed by the Applicant at the pump  
19 to record gallons per minute being pumped and the meter will  
20 also record an accumulative figure in acre-feet that have been  
21 pumped. The applicant will keep daily records of hours and  
22 dates of pumping on a form provided by the Department. The  
23 Flathead Irrigation Project Engineer and a representative of  
24 the Department of Natural Resources and Conservation will have  
25 access to all measuring devices.
- 26 5. Subject to a measuring device to be installed by the Flathead  
27 Project at the Applicants expense, and to be placed at a  
28 convenient spot below the pump site to monitor the flows of

1 the unnamed tributary. The Applicant will submit his proposed  
2 pumping schedule at the beginning of each irrigation season  
3 to the Project Engineer and keep daily records, but not less  
4 than weekly records, of the stream flows at the measuring  
5 device below the pump site from April 15 to October 1 of each  
6 year. The Flathead Irrigation Project Engineer and a rep-  
7 resentative of the Department of Natural Resources and Con-  
8 servation will have access to all measuring devices.

9 6. Subject to a staff gauge to be installed by the Flathead Project  
10 at the Applicants expense. Gauge to be placed on the road  
11 bridge at a point in the NE1/4 NW1/4 of section 28, T20N,  
12 R21W, to monitor the stream flows at that point above the  
13 confluence of Crow Creek and the Flathead River. This measuring  
14 device will be monitored on a daily basis, if possible, but  
15 not less than a weekly basis, by the applicant and the objectors.  
16 The records will be mailed to the department at the end of the  
17 irrigation season or upon request.

18 7. It is understood that should the applicant not comply with the  
19 provisions of the permit, that the Flathead Irrigation Project  
20 Engineer or the Department of Natural Resources and Conservation  
21 District Manager, can shut off the pump. Upon this action,  
22 the applicant shall have the opportunity of a show-cause  
23 hearing to show cause why the permit should not be revoked and  
24 the pump removed from the stream.

25 (Underlined portions are additions made to original agreement  
26 by the Flathead Irrigation Project Engineer.)

27 The substantive portions of the agreement as signed by both the  
28 Applicant and the Objectors is accepted by the Hearing Examiner. The



1 wording on some of the conditions has been changed, to fit standard  
2 wording on permits issued by the Department. Conditions to a permit  
3 must be restricted to the Permittee, and not placed on any other party.  
4 Also, any permit issued by the Department is subject to possible revo-  
5 cation after a show-cause hearing if conditions of the permit are  
6 violated.

7  
8 PROPOSED ORDER

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16 unnamed tributary at a point in the NE1/4 SE1/4 SW1/4 of  
17 Section 1, Township 20 North, Range 21 West, M.P.M., and  
18 impounded in a new .002 acre-foot pond and used for new  
19 irrigation on 14 acres in the NW1/4 of Section 12, 19 acres in  
20 the SW1/4, and 28 acres in the SE1/4 of Section 1, all in  
21 Township 20 North, Range 20 West, M.P.M., for a total of 61  
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- 24 2. The Permit is granted subject to all prior water rights.
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3 at the pump in order to allow the flow rate and volume of  
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25 and Conservation and the Flathead Irrigation Project Engineer  
26 access to all measuring devices after reasonable notice is  
27 given.
- 28 10. The issuance of the Provisional Permit by the Department



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NOTICE

This Proposed Order is offered for the review and comment of all parties of record. The review and comment period shall commence with the mailing of this Proposed Order and shall end fifteen (15) days thereafter. No extensions of time for comment will be granted.

The Final Order in this matter will be sent to all parties by certified mail.

DATED this 13th day of March, 1980.

*David L. Pengelly*  
DAVID L. PENGELLY, D.W.R.&C.  
HEARING EXAMINER

CASE # 16340